

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION**

IN RE:

**MARCIA LOUISE MARGOTTA
DEBTOR**

CASE NO. 09-05971-8-JRL
CHAPTER 13

**MOTION FOR RELIEF FROM AUTOMATIC STAY AND CO-DEBTOR STAY
OR IN THE ALTERNATIVE ADEQUATE PROTECTION
{No Protest Motion Pursuant to 11 U.S.C. § 362}**

COMES NOW Wells Fargo Bank, NA (hereinafter “Movant”), a secured creditor in the above-captioned case, by and through counsel, Brock & Scott, PLLC, and moves this Court to enter an order granting its request for relief from the automatic stay imposed by 11 U.S.C. § 362(a) and 11 U.S.C. §1301 on the following grounds:

1. On July 20, 2009, the Debtor, Marcia Louise Margotta, filed a petition with the Bankruptcy Court for the Eastern District of North Carolina under Chapter 13 of Title 11 of the United States Code. Mr. John F. Logan of Raleigh, North Carolina was appointed Trustee. Estate of Frank A. Margotta is a co-debtor with regard to Collateral described below.
2. This Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 1334 and 157.
3. The Estate of Frank Margotta holds title to the real property (hereinafter “Collateral”) described in that Deed of Trust recorded in the Beaufort County Register of Deeds in Book 02583 at Page 0165 and recorded on June 13, 2007 (hereinafter “Deed of Trust”) with an address of 4 Lakeside Drive, Bluffton, South Carolina 29910. A copy of the Deed of Trust is attached hereto and is incorporated herein as Exhibit “A”. Upon information and belief, the Debtor holds an interest in the real property through the Estate of Frank Margotta.
4. Movant holds a Promissory Note secured by the Deed of Trust from the Estate of Frank Margotta in the original principal amount of \$185,400.00 and dated June 7, 2007 (hereinafter “Note”). A copy of the Note is attached hereto and incorporated herein as Exhibit “B”.
5. Upon information and belief, the 2009 tax value is \$178,898.00.

6. Upon information and belief, the approximate payoff due and owing to Movant as of May 24, 2010 is \$205,617.80.

7. As a result of the averments in paragraphs “5” through “6”, no equity exists in the subject property.

8. Upon information and belief, the amount of default, exclusive of fees and costs, is as follows:

6	payments @ (2/09 - 7/09)	\$	1,352.76	\$	8,116.56
10	payments @ (8/09 - 5/10)	\$	1,390.42	\$	13,904.20
15	late charges @	\$	60.13	\$	901.95
	Total Delinquency			\$	22,922.71

9. As a result, Movant lacks adequate protection of its interest in the Collateral. By virtue of such lack of protection, good cause exists to lift the automatic stay imposed hereunder. Otherwise, Movant will suffer irreparable harm with respect to Movant’s interest in the Collateral.

10. Pursuant to §362(e), Movant has noticed any interested party that it must file and serve any response, including an objection, within fourteen (14) days from service of the Notice of Opportunity for Hearing attached hereto and incorporated herein by reference, or to otherwise appear at the time and location stated therein to object to this motion. In the event that an interested party does not request a hearing, the Court may decide the matter on the record before it.

WHEREFORE, Movant prays the Court as follows:

1. Modify the Automatic Stay of Section 362(a) and 11 U.S.C. §1301 of the Bankruptcy Code to permit Movant to enforce its security interest in the Collateral.

2. Modify Rule 4001(a)(3) of the Bankruptcy Code so that it is not applicable in this case and so Movant may immediately enforce and implement this order granting relief from the automatic stay and co-debtor stay.

3. As an alternative to the relief prayed for above, grant adequate protection to Movant for its interest in the Collateral.

4. Grant Movant reasonable costs and attorney fees incurred in connection with this proceeding; and,

5. Grant Movant such other and further relief as the Court deems just and proper.

This 24th day of May, 2010.

Brock and Scott, PLLC

/s/ Sean M. Corcoran

Sean M. Corcoran

Attorney for Movant

Brock & Scott, PLLC

5121 Parkway Plaza Drive, Suite 300

Charlotte, NC 28217

(704) 369-0676

Bar No.: 33387

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION**

IN RE:

**MARCIA LOUISE MARGOTTA
DEBTOR**

**CASE NO. 09-05971-8-JRL
CHAPTER 13**

NOTICE OF MOTION

**TO THE DEBTOR, DEBTOR'S ATTORNEY, TRUSTEE, AND ALL PARTIES IN
INTEREST**

THIS NOTICE IS HEREBY GIVEN of a Motion for Relief from Automatic Stay filed simultaneously herewith in the above-captioned case, a copy of which is attached hereto, and;

NOTICE IS FURTHER GIVEN that this motion may be allowed pursuant to U.S.C. §362 provided no response and request for a hearing is made by the parties in interest in writing to the Clerk of Court within FOURTEEN (14) DAYS from the date of this notice, and;

NOTICE IS FURTHER GIVEN that if a response and request for a hearing is filed by a party in interest named herein, in writing within the time indicated, a hearing will be conducted on the motion and response at a date and time to be later set by the Court and all parties will be notified accordingly. If no response for a hearing is timely filed, the Court may rule on the Motion ex-parte without further notice. Any party requesting a hearing shall appear at the hearing in support of such an objection or may be assessed with costs of Court.

This 24th day of May, 2010

Brock and Scott, PLLC
/s/ Sean M. Corcoran
Sean M. Corcoran
Attorney for Movant
Brock & Scott, PLLC
5121 Parkway Plaza Drive, Suite 300
Charlotte, NC 28217
(704) 369-0676
State Bar No.: 33387

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NORTH CAROLINA
WILSON DIVISION**

IN RE:

**MARCIA LOUISE MARGOTTA
DEBTOR**

**CASE NO. 09-05971-8-JRL
CHAPTER 13**

CERTIFICATE OF SERVICE

The undersigned hereby certifies under penalty of perjury that he/she is over eighteen (18) years of age and that the MOTION FOR RELIEF FROM AUTOMATIC STAY and the NOTICE OF MOTION in the above captioned case were this day served upon the below named persons by mailing, postage prepaid, first class mail a copy of such instrument to each person(s), parties, and/or counsel at the addresses shown below:

Marcia Louise Margotta
211 Lancaster Road
Mebane, NC 27302

Mr. John T. Orcutt
Via electronic notice

Mr. John F. Logan
Via electronic notice

Estate of Frank A. Margotta
4 Lakeside Drive
Bluffton, SC 29910-8015

This 24th day of May, 2010.

Brock and Scott, PLLC

/s/ Sean M. Corcoran
Sean M. Corcoran
Attorney for Movant
Brock & Scott, PLLC
5121 Parkway Plaza Drive, Suite 300
Charlotte, NC 28217
(704) 369-0676
Bar No.: 33387